IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1159 OF 2003

The State of Maharashtra, .. Appellant.
Vs
Bapusaheb Ramchandra Vthale, .. Respondent.

Mrs M.H.Mhatre, APP for the appellant.
Mr G.M.Savagave, for the respondent.

CORAM : D.B.BHOSALE, J.

DATED : 31st July, 2006

P.C.:

1. Heard the learned A.P.P. for the appellant and the learned counsel for the respondent.

2. The appellant-State has impugned the judgment and order dated 22.4.2003, by which the respondent-accused has been acquitted of the offence punishable under section 3(i)(X) of S.C. & S.T. (Prevention of Atrocities) Act and under section 7(i)(d) of Protection of Civil Rights Act. I perused the impugned judgment and in particular paragraphs 7 to 9 thereof. In paragraph 7 the learned trial Judge, after considering the evidence of PW 1 complainant, has made the following observations:

> "There is nothing in the application that on 7.4.2002 the accused abused him in the name of his caste except using words that he had not constructed reservoir for Mahar, Mang people. It is to be pointed out that the complainant admitted to have taken separate tap connection to his premises prior to the incident and also is having water tank of 200 litres capacity in

> his house. Thus there was as such no question to close separate tap connection and flow of water to the water tank of the PW 1. Here it is also pertinent to note that the information about the alleged incident was reported to PSI, PCR unit on 7.4.2002, Exh.10. This is FIR about the alleged incident in the light of provisions of Sec.154 of Cr.P.C. Thus, Exh.11 a subsequent statement recorded by PW 1, PSI Shaikh on 2.5.2002 cannot be treated as FIR. There is absolutely nothing alleged in Exh.10 that on 7.4.2002 the complainant had demanded water to the accused as there was no tap water and thereafter the further alleged incident took place. It also does not appear to be probable that in the event of strained relations between the accused and the complainant, the complainant would go and demand water to the accused. When separate tap water connection is admittedly taken by the complainant neither the accused had any reason to cut the tap water connection nor to obstruct the flow of water to his separate water taps. It has also come in his cross examination that the water comes in the early morning in Yadogopal Peth, then, if at all there was absolutely no water in the house, it does not appear probable that the complainant would demand water in the afternoon after 1.30 pm. Thus the version of the complainant is absolutely not inconfirmity with his complaint application Exh.10. On the contrary it totally contradicts his version."

From perusal of the aforesaid observations, it is clear that no explanation was offered by the prosecution as to why the allegations, which were reflected in the FIR lodged on 2.5.2002, were not made in the application dated 7.4.2002. Even the delay in filing the FIR has also not been explained by the prosecution. The learned Judge, after appreciating the evidence of PW 6- wife of the complainant, has recorded a finding that the evidence is not consistent with her husband. The learned Judge has further

proceeded to record a finding that there was no reason for the complainant to go to the accused and ask for water since he had an independent water connection of his own. The evidence of an independent witness Imran has also been disbelieved on the ground that Imran and the son of the complainant were working together. It was further observed that there was no reason for the complainant to go and ask for water at 1-1.30 pm when supply of water was available only in the morning. The learned Judge has also proceeded to accept the defence of alibi propounded by the accused. Considering the reasons recorded by the court below on appreciation of the evidence on record, the impugned judgment cannot be said to be perverse or unreasonable. The view taken by the trial Court is reasonably possible view and merely because the other view is possible that by itself cannot be a ground to interfere with the order of acquittal. In the circumstances, this appeal is dismissed.

(D.B.BHOSALE,J.)